

FILED

Mark C. McCartt, Clerk  
U.S. DISTRICT COURT

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2. The Plaintiffs' claims are brought against the United States pursuant to 28 U.S.C. §2671 *et seq.*, the Federal Tort Claims Act ("FTCA") seeking money damages for injuries to the Plaintiffs caused by the negligent acts and omissions of the United States, Claremore Indian Hospital, their agents, employees, apparent agents and ostensible agents acting within the scope of their employment and/or agency when they provided substandard care to Kathy, between February 10, 2014 and April 5, 2014. Exclusive jurisdiction over this claim is conferred upon this Court by 28 U.S.C. §1346(B)(1).
3. Venue is proper in this District under 28 U.S.C. §1402(B) in that the Plaintiffs reside within Creek County, Oklahoma, and the acts giving rise to this claim occurred within this District in Rogers County, Oklahoma.
4. In compliance with the FTCA, 28 U.S.C. §2675, Plaintiffs timely presented written Notice of their claim to the United States in August 2015, seeking money damages in the amount of \$5,000,000.00 for their injuries.
5. The United States denied the claim on August 18, 2017.
6. The Plaintiffs have fully exhausted their administrative remedies and timely initiated this Complaint pursuant to 28 U.S.C. §2675.

#### **THE PARTIES**

7. The Plaintiffs are residents of Creek County, Oklahoma.
8. The Defendant, United States, is the proper party Defendant, as Plaintiffs are required by 28 U.S.C. Section 2679 to bring their cause of action against the Defendant and not the Department of Health and Human Services, nor any employee of the Department of Health

and Human Services, nor any agency under the Department of Health and Human Services, responsible for the acts and/or omissions complained of herein.

9. The Department of Human Services has numerous agencies including the Indian Health Services and/or Public Health Service which provide health care to Native Americans such as the Plaintiff, Kathy Osburn.
10. Claremore Indian Hospital, is a facility located in Claremore, Oklahoma, which provides health care and operates as part of the Indian Health Services.

### **FACTS**

11. On February 10, 2014, the Plaintiff, Kathy Osburn, presented to the Claremore Indian Hospital for a hernia repair with mesh, which was performed by Juni A. Femi-Pearse, M.D. After the surgery, Kathy developed a wound infection, and her follow-up care was provided at the Claremore Indian Hospital by Dr. Femi-Pearse and other employees of the Hospital. The diagnosis and treatment of Kathy's wound infection did not meet the standard of care and resulted in a chronic non-healing wound with dry gangrene and an open wound to the anterior abdominal wall with necrosis, purulent drainage and indwelling infected synthetic mesh, for which Kathy sought treatment at Saint Francis Hospital.
12. The negligence of the doctors at the Claremore Indian Hospital resulted in damages to Kathy, including, but not limited to, additional surgeries, physical and mental suffering, permanent disfigurement, medical expenses, loss of income and earning capacity, and temporary and permanent disability.

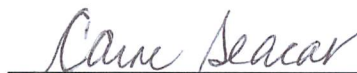
**PLAINTIFF'S CLAIM FOR RELIEF**

13. The Plaintiffs incorporate paragraphs 1 through 12 and further allege and state as follows:
14. The medical care and treatment provided to Kathy by the United States, the Claremore Indian Hospital, their employees, agents, ostensible agents and apparent agents, while acting within the scope of their employment and/or agency, failed to meet the minimum standards of care for health care practitioners. The Defendant failed to properly diagnose Kathy Lee Osburn, and failed to properly treat her for the infectious disease process which resulted in necrotizing fasciitis and required numerous surgeries and extensive medical treatment to resolve.
15. The Defendant, United States, is vicariously responsible for the acts and omissions of its employees, agents, ostensible agents, apparent agents, all of whom provided substandard care to the Plaintiff, Kathy Lee Osburn.
16. As a result of the negligence of the Defendant, the Plaintiff, Kathy Osburn, has been damages as follows:
  - a. Physical pain and suffering, past and future;
  - b. Mental pain and suffering, past and future;
  - c. Physical impairment, past and future,
  - d. Disfigurement,
  - e. Loss of earnings,
  - f. Impairment of earning capacity;
  - g. Expenses of medical care, treatment, and services, past and future,

All in the amount of \$5,000,000.00,

17. At all times pertinent to this action, the Plaintiffs, Kathy Lee Osburn and Justin Osburn, were husband and wife. As a result of negligence of the Defendant, the Plaintiff, Justin Osburn, has been deprived of the consortium and services of his wife, and has been damaged in an amount in excess of \$75,000.00.

WHEREFORE, the Plaintiffs prays that the Court enter judgment against the Defendant for damages and losses in the amount stated in the Federal Tort Claims Notice of \$5,000,000.00, together with interest, cost and such other further relief which this Court may deem just and proper.



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